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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GOOGLE LLC,

Plaintiff and Counter-defendant,

v.

SONOS, INC.,

Defendant and Counter-claimant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

**SONOS, INC.'S MOTION TO STRIKE
PORTIONS OF GOOGLE'S MOTION
FOR SUMMARY JUDGMENT AND
EXPERT DECLARATION**

Date: June 9, 2022
Time: 8:00 a.m.
Place: Courtroom 12, 19th Floor
Judge: Hon. William Alsup

Complaint Filed: September 28, 2020

FILED UNDER SEAL

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that on June 9, 2022 at 8:00 a.m., or as soon thereafter as may be heard before the Honorable Judge William Alsup in Courtroom 12 on the 19th Floor of the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Sonos, Inc (“Sonos”) will, and hereby does, move this Court for an Order striking untimely and improper arguments in Plaintiff Google LLC’s (“Google”) Motion for Summary Judgment and Dr. Samrat Bhattacharjee’s supporting declaration concerning the validity of United States Patent No. 9,967,615 (“the ’615 Patent”). This motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities and exhibits thereto, all documents in the Court’s file, and such other written or oral evidence and argument as may be presented.

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Other Authorities

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Patent L.R. 3-4	1, 3, 4, 11

STATEMENT OF THE RELIEF REQUESTED

Pursuant to Patent Local Rules 3-3 and 3-4 and Federal Rules of Civil Procedure 26 and 37, Sonos seeks an order striking 1) portions of Google’s Motion for Summary Judgment Pursuant to the Court’s Patent Showdown Procedure (“Google’s MSJ”) (Dkt. 211); 2) portions of Exhibit 1, Declaration of Samrat Bhattacharjee, Ph.D. (“Bhattacharjee Decl.”) (Dkt. 211-1); and 3) the entirety of Exhibits 10 and 14 (Dkts. 211-10 and 211-14) that include untimely and improper arguments concerning the validity of the ’615 Patent.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Google’s patent showdown summary judgment brief improperly relies on new invalidity arguments and prior art references not previously disclosed. Those arguments and evidence should be struck.

Patent Local Rule 3-3 obligated Google to both identify (i) every prior art reference upon which it may rely and (ii) “specifically where and how in each alleged item of prior art each limitation of each asserted claim is found.” While Google served invalidity contentions under this rule on December 6, 2021, those contentions do not include key arguments and evidence upon which Google bases its summary judgment motion of invalidity. Specifically, in an attempt to make its case, Google sets forth a completely novel anticipation theory for its YouTube Remote System prior art, relies on multiple new references, including a previously undisclosed version of YouTube Remote,¹ and relies on specific pinpoint citations to source code that were never before identified. Allowing Google to hide key arguments and prior art until summary judgment—particularly when the material is regarding Google’s *own system*—would directly contradict the notice function of the patent local rules. As detailed below, Sonos therefore respectfully requests

¹ Patent Local Rule 3-4 obligated Google to “produce or make available for inspection ... [a] copy or sample of the prior art identified pursuant to Patent L.R. 3-3(a) which does not appear in the file history of the patent(s) at issue.” While Google produced some versions of source code for the YouTube Remote System for inspection by December 6, 2021, Google did not produce for inspection the version of the source code on which Google and its expert now rely.

1 that the Court strike these new theories and materials referenced in Google’s Motion for Summary
 2 Judgment and accompanying expert declaration.

3 **II. BACKGROUND**

4 Sonos received Google’s Patent Local Rule 3-3 invalidity contentions on December 6,
 5 2021. After review, and in connection with ongoing meet-and-confers with Google, Sonos
 6 identified key shortcomings of those contentions. Broadly speaking, despite Google’s inclusion
 7 of various screenshots and block quotes from alleged prior art references, Google’s invalidity
 8 contentions failed to identify or explain *how* those images/quotes related to any particular claim
 9 element.

10 In an attempt to resolve these deficiencies, Sonos sent a letter to Google on February 10,
 11 2022, providing examples where Google failed to meet its obligations and expressly inviting
 12 Google to amend its contentions. Ex. B (Feb. 10 letter).² Among other things, Sonos’s February
 13 10 letter explained that Google failed to identify the specific source code on which Google
 14 planned to rely. *Id.* at 3. Sonos also explicitly noted that its letter was addressing *systemic*
 15 deficiencies from “every single chart or every single element” and providing *examples* “to
 16 illustrate” those deficiencies, but was not an exhaustive recounting of all the issues in the
 17 *thousands* of pages of Google’s contentions. *Id.* at 1; *see also* Ex. E (March 11 email) at 1
 18 (explaining that Sonos’s February 10 letter “pointed out Google’s utter failure to provide any
 19 narrative explanation whatsoever explaining Google’s theories of invalidity – a failure that
 20 permeates every last one of Google’s 46 charts and for which we provided three *examples* to
 21 illustrate ...”).

22 Google responded on March 2, 2022, but only addressed the representative examples
 23 included in Sonos’s letter. Ex. C (March 2 letter). Google made no effort to correct the systemic
 24 issues that Sonos identified. *Id.* Nor did Google agree to amend its contentions. *Id.* Sonos
 25 attempted to work with Google again several times throughout March, until it became clear that
 26

27
 28 ² All lettered exhibits cited in this motion are attached to the Declaration of Alyssa Caridis filed in support of this motion and concurrently herewith.

Google did not intend to provide cognizable invalidity theories or specify the portions of its source code it intended to use for these theories. Exs. D and E (March 3 and March 11 emails).

Google filed its Motion for Summary Judgment on April 14, 2022. Google moved for summary judgment of invalidity on claim 13 of the '615 patent, contending that claim 13 is both anticipated by and obvious in light of the alleged prior art. Google's motion, along with its accompanying expert declaration, included multiple new invalidity theories and prior art references, and relied on specific pinpoint citations to source code that were never before identified.

III. LEGAL STANDARD

Patent Local Rule 3-3(c) required Google to serve invalidity contentions "identifying specifically where and how in each alleged item of prior art each limitation of each asserted claim is found." In turn, Patent Local Rule 3-4(b) required Google to "produce or make available for inspection ... [a] copy or sample of the prior art identified pursuant to Patent L.R. 3-3(a) which does not appear in the file history of the patent(s) at issue."

These disclosure requirements exist "to further the goal of full and timely discovery and provide all parties with adequate notice and information with which to litigate their cases." *Fresenius Medical Care Holdings, Inc. v. Baxter Intern., Inc.*, No. C03-1431 (SBA), 2006 WL 1329997 at *4 (N.D. Cal., May 15, 2006) (citations omitted). "The rules are designed to require parties to crystallize their theories of the case early in the litigation and to adhere to those theories once they have been disclosed." *Id.* "Any invalidity theories not disclosed pursuant to Local Rule 3-3 are barred, accordingly, from presentation at trial (whether through expert opinion testimony or otherwise)." *MediaTek Inc. v. Freescale Semiconductor, Inc.*, No. 11-cv-5341 (YGR), 2014 WL 690161, at *1 (N.D. Cal. Feb. 21, 2014) (citing *Avago Techs. Gen. IP PTE Ltd. v. Elan Microelectronics Corp.*, No. C04-05385 (JW), 2007 WL 2103896 (N.D. Cal., Jul. 20, 2007)), *aff'd* 2007 WL 2433386 at *1 (N.D. Cal., Aug. 22, 2007). Courts can choose to strike new theories and references under Patent Local Rule 3-3 when a party fails to meet its disclosure obligations, even absent a showing of prejudice caused by nondisclosure. *Finjan, Inc. v. Sophos, Inc.*, No. 14-cv-01197 (WHO), 2016 WL 2988834, at *9 (N.D. Cal. May 24, 2016); *Largan Precision Co., Ltd. v.*

1 *Genius Elec. Optical Co., Ltd.*, No. 13-cv-02502 (JD), 2014 WL 6882275, at *3-5 (N.D. Cal. Dec.
 2 5, 2014). Likewise, material allegedly relevant to a party's prior art that is not produced pursuant
 3 to Local Rule 3-4 will be precluded. *See, e.g., IXYS Corp. v Adv. Power Tech. Inc.*, No. C 02-
 4 03942 MHP, 2004 WL 1368860, at *2-3 (N.D. Cal. Jun. 16, 2004).

5 **IV. ARGUMENT**

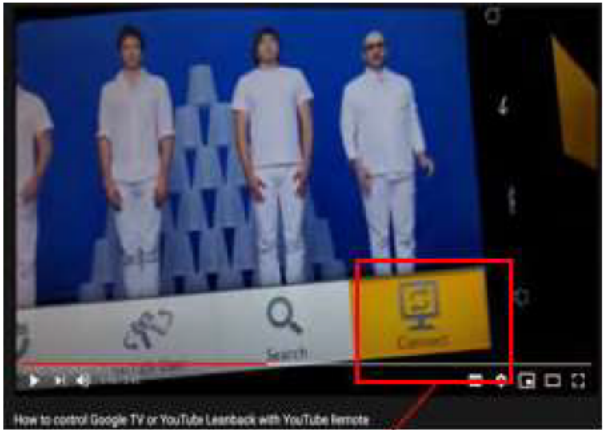
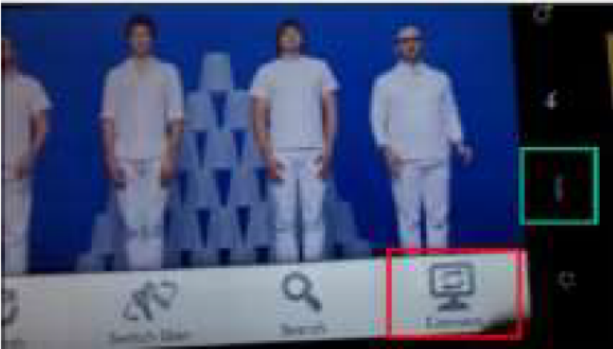
6 Google's improper invalidity evidence/theories fall under four broad categories. Each
 7 category is independently objectionable and should be struck for the reasons outlined below.

8 **A. Google Improperly Introduced A New Anticipation Theory.**

9 Google contends that the YouTube Remote System anticipates claim 13 of the '615 patent.
 10 Google's anticipation theory for one of the claim limitations, which Google identifies as
 11 "Limitation 13.4,"³ relies on Google's contention that the YouTube Remote System detects a "set
 12 of inputs" when the user presses the "menu" button and then presses the "Connect" button.
 13 Google's MSJ at 18-19. This theory is nowhere to be found in Google's invalidity contentions.

14 While Google did disclose the YouTube Remote System as alleged prior art in its invalidity
 15 contentions, the *theory* on which Google is now relying is brand new. In its contentions, Google
 16 identified *only* the "Connect" button as teaching Limitation 13.4, asserting that the system
 17 "implicitly detects a set of inputs" when the "Connect" button is selected. Ex. A. ('615 Chart) at
 18 17-18. In contrast, in its motion for summary judgment Google completely changes its theory by
 19 now pointing to a never-before identified "menu" button and claims that selection of *that* button in
 20 combination with selection of the "Connect" button discloses this claim element. The below table
 21 shows Google's theory as disclosed in its invalidity contentions side-by-side with its summary
 22 judgment argument:

23
 24
 25
 26 ³ As set forth in Google's Motion for Summary Judgment, Limitation 13.4 corresponds to
 27 "detecting a set of inputs to transfer playback from the control device to a particular playback
 28 device, wherein the set of inputs comprises: (i) a selection of the selectable option for transferring
 playback from the control device and (ii) a selection of the particular playback device from the
 identified playback devices connected to the local area network[.]" Notably, Google referred to
 this limitation as Limitation 13d in its contentions. *See* Ex. A ('615 Chart) at 17.

Invalidity Contentions	Summary Judgment
<p data-bbox="289 285 888 464">“The YT Remote System implicitly detects a set of inputs once the ‘<i>connect</i>’ option is selected, based on devices on the same LAN for which user is logged in, e.g. a TV screen logged into the user’s YouTube account.”</p> <p data-bbox="289 499 435 535">See e.g. [4]</p>  <p data-bbox="492 1134 753 1169">Set of inputs detected</p>	<p data-bbox="911 285 1520 611">“To transfer playback using the YTR application the user may press the <i>menu</i> button (shown in green in the image ...) which brings up a ‘<i>Connect</i>’ button (shown in red) that the user may further select to transfer playback to a particular playback device. The user’s selection of <i>menu</i> and <i>select</i> [sic] are a ‘set of inputs’ to transfer playback that are detected by the Android phone.”</p> 
Ex. A ('615 Chart) at 18 (emphasis in text added).	Google’s MSJ at 19 (emphasis in text added).

Even setting the text aside, the difference is clear from the images. In its contentions (left) Google used a red box to only identify the “Connect” button as the “set of inputs.” Google’s summary judgment theory adds an entirely new element—Google uses a green box to highlight the “menu,” allegedly working in concert with the “Connect” button (again boxed in red)—to satisfy the claimed “set of inputs.”

Google is barred from raising invalidity arguments that were not previously disclosed in its invalidity contentions, even if such arguments are based on the same reference(s) that Google identified in its contentions. *MediaTek*, 2014 WL 690161 at *1. Courts are clear that infringers cannot introduce new teachings of a previously disclosed reference to create new invalidity theories. *See Largan*, 2014 WL 6882275 at *5-6. Instead, the invalidity contentions must disclose

the “specific [teaching of the prior art] with respect to this specific claim,” as well as the infringer’s “theory for why the reference discloses this element.” *Id.* For example, the defendant in *Largan* served invalidity contentions citing to the Park prior art reference for various elements of the asserted claims. *Id.* The Court found that the defendant cited the Park reference in its “invalidity contentions for the broader elements in which [the] limitations [are] found.” *Id.* at *5. However, the expert then relied on *different* teachings of Park that the defendant had not previously disclosed in its contentions to support the expert’s opinion of invalidity. *Id.* at *5-6. The Court held that the expert could not introduce new teachings of this prior art later in the litigation to fill in the gaps of its invalidity theories. *E.g., id.* at *5-6 (striking expert report which “cites various other portions of the Park ’665 patent in arguing that it discloses or renders obvious the ‘TTL/ImgH<1.95’ limitation of this claim.”). The Court struck, under Patent Local Rule 3-3, all portions of the defendant’s expert report that used new teachings of the Park reference to satisfy any claim element. *Id.* Similar to the defendant in *Largan*, Google is attempting to use *different* teachings from the YouTube Remote System to fill gaps in its invalidity contentions. *Id.* Google did not present the “menu” button as part of the claimed “set of inputs” in its invalidity contentions, and it should not be permitted to do so now. The Court should strike paragraphs 136 and 159-160 of Dr. Bhattacharjee’s declaration and page 19, lines 1-7 of Google’s motion for summary judgment on this basis.

B. Google’s Reliance on U.S. Patent No. 9,490,998 For Obviousness Is Improper

Google similarly tries to expand its use of U.S. Patent No. 9,490,998 (“the ’998 Patent”) beyond what it disclosed in its invalidity contentions for Limitation 13.4. Specifically, Google cites to the ’998 Patent at 10:62-11:6 to argue that the ’998 Patent discloses that “the ‘user interface’ of the Remote Control may display the ‘previously paired controlled devices’ so that a user may select and control ‘one or more paired controlled devices.’” Google’s MSJ at 20. However, column 10:62-11:6 is simply not cited in Google’s invalidity contentions for this claim element. Instead, Google’s invalidity contentions for this element cite entirely different portions of the patent, which do *not* disclose selecting one or more previously paired devices using the user interface of the remote control. Ex. A (’615 Chart) at 18-20 (citing 4:21-57, 4:58-67, 8:1-59,

1 and Figure 1). Additionally, Google’s contentions for Limitation 13.4 merely provide block
 2 quotes for these different citations to the ’998 Patent and never apply the teachings to the claims
 3 or articulate any theories specifically related to selecting one or more previously paired devices
 4 using the user interface of the remote control. *See id.*

5 As discussed previously, Google cannot use new teachings of its previously disclosed
 6 prior art to fill gaps in its invalidity theories. *Supra*, §IV.A. The Court should therefore strike
 7 paragraphs 149 and 169 of Dr. Bhattacharjee’s declaration and page 20, lines 3-6 of Google’s
 8 motion for summary judgment on this basis.⁴

9 **C. Google’s Previously Undisclosed Prior Art References Must Be Stricken**

10 A party cannot rely on a prior art reference that it did not disclose in its invalidity
 11 contentions. *ASUS Computer Int’l v. Round Rock Research, LLC*, No. 12-cv-02099 JST, 2014
 12 WL 1463609, at *8-9 (N.D. Cal. Apr. 11, 2014); *Largan*, 2014 WL 6882275, at *6. While new
 13 references may be used by an expert as general background material, such references cannot be
 14 relied on “as prior art that allegedly renders the asserted claims of the ... patent[] obvious.”
 15 *Verinata Health, Inc. v. Sequenom, Inc.*, No. C12-00865 (SI), 2014 WL 4100638, at *5 (N.D. Cal.
 16 Aug. 20, 2014); *Largan*, 2014 WL 6882275, at *6 (finding that a reference is not general
 17 background if it is used “in support of a particular claim element being anticipated or obvious”).

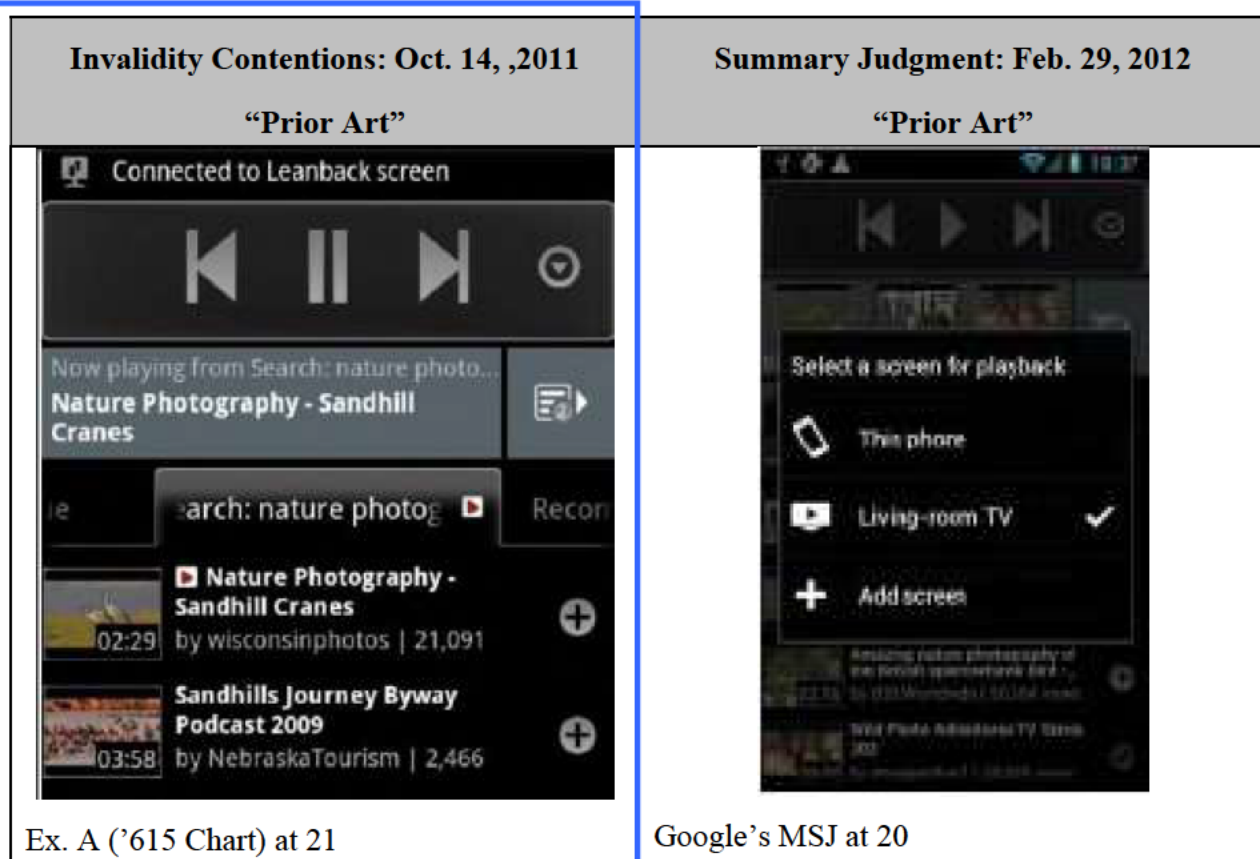
18 **1. Google’s MSJ Exhibit 14: February 29, 2012 Version of the YouTube**
 19 **Remote System**

20 Google improperly relies on a never-before disclosed version of the YouTube Remote
 21 system in its summary judgment motion. Google’s MSJ at 20. Specifically, with respect to

23 ⁴ To the extent Google points to its unexplained, 4-column citation to ’998 Patent at 8:54-11:6 in
 24 its contentions, Google only relied on this citation for Limitation 13.1 (i.e., 13a in its contentions),
 25 which recites “causing a graphical interface to display a control interface including one or more
 26 transport controls to control playback by the control device.” Ex. A (’615 Chart) at 7. Google
 27 cannot now pivot and try to rely on its citation for Limitation 13.1 to now support its invalidity
 28 theory for Limitation 13.4. A citation is not properly disclosed with respect to an element simply
 because the citation is included elsewhere in the invalidity claim chart. *See MediaTek*, 2014 WL
 690161 at *4 (“The argument that the citation of Bhuyan in connection with Claim 1 should
 suffice for dependent Claim 5 as well is wholly without merit.”); *see also Largan*, 2014 WL
 6882275, at *5 (similar holding).

Limitation 13.4, Google’s motion for summary judgment relies on a February 29, 2012 Wayback Machine capture of a website depicting a version of the YouTube Remote System that was allegedly released on January 25, 2012 to argue that “the ‘user interface’ of the Remote Control may display the ‘previously paired controlled devices’ so that a user may select and control ‘one or more paired controlled devices.’” *Id.*; Google’s MSJ Ex. 14.

Google never disclosed this alleged January 25, 2012 version of the YouTube Remote System or the “Select a screen for playback” menu allegedly provided by that version in its invalidity contentions. Instead, in its contentions, Google specifically cited to an October 14, 2011 Wayback Machine capture showing an *earlier*, different version of the YouTube Remote System. See Ex. A (’615 Chart) at 1 (identifying this document as document [9]). This earlier version included different screenshots of the YouTube Remote System; none of which include the image that Google relies on in its Motion for Summary Judgment. See Ex. F (Wayback Machine capture). Below is a comparison of what Google disclosed in its invalidity contentions versus what it used in its Motion for Summary Judgment:



1 The screenshot and underlying webpage from Google’s invalidity contentions (left) do not contain
 2 the “Select a screen for playback” menu that Google relies on in its Motion for Summary Judgment
 3 (right). Nor do the invalidity contentions contain any allegations that the YouTube Remote System
 4 included a “Select a screen for playback” menu.

5 Google’s failure to include this version of the YouTube Remote System in its invalidity
 6 contentions is particularly brazen because it is Google’s *own* system. Google was unquestionably
 7 aware of its own system, as it cited to and relied on *other* versions of the system in its contentions.
 8 *E.g.*, Ex. A (’615 Chart) at 1, 20-21. Instead of complying with Local Rules 3-3, Google waited
 9 until summary judgment to disclose this new theory based on this different version of the alleged
 10 prior art system. Google had an obligation to disclose the version of the prior art system it intended
 11 to rely on in its invalidity contentions rather than hold it back for a tactical advantage. *Largan*,
 12 2014 WL 6882275 at *4 (“Our Local Rules are designed precisely to eliminate the gamesmanship
 13 of hints in favor of open disclosure.”). Because the version of the YouTube Remote System that
 14 Google presents in its Motion for Summary Judgment is distinct from the version it presented in its
 15 invalidity contentions, the Court should strike all of Google’s arguments related to the version of
 16 the YouTube Remote System that is shown in the February 29, 2012 Wayback Machine capture
 17 (*i.e.*, Google’s MSJ Ex. 14). The Court should strike Exhibit 14, paragraphs 169-171 of Dr.
 18 Bhattacharjee’s declaration, and page 20, lines 11-14 of Google’s motion for summary judgment
 19 on this basis.

20 **2. Google’s MSJ Exhibit 10: YouTube Remote API**

21 Google’s expert, Dr. Samrat Bhattacharjee, improperly uses another new prior art reference
 22 that Google did not disclose in its invalidity contentions to support his analysis. Specifically, Dr.
 23 Bhattacharjee cites to Exhibit 10, documentation for an Application Programming Interface (API)
 24 for the YouTube Remote System as of July 12, 2010, to support his invalidity arguments for
 25 Limitation 13.5. Bhattacharjee Decl. at ¶180. [REDACTED]

1 [REDACTED] *Id.* Exhibit 10 is Dr. Bhattacharjee's sole support [REDACTED]
 2 [REDACTED] *Id.*
 3 In this way, Exhibit 10 [REDACTED]
 4 [REDACTED]
 5 [REDACTED] *See id.*

6 Google's invalidity contentions for the '615 Patent do not include references to Exhibit 10
 7 or any other API or API documentation. *See* Ex. A ('615 Chart). Nonetheless, Dr. Bhattacharjee
 8 "relies on [Exhibit 10] as prior art that allegedly renders the asserted claims [invalid]." *Verinata*,
 9 2014 WL 4100638 at *5. Such prior art references must be disclosed in invalidity contentions.
 10 Patent L.R. 3-3(c). Google failed to do so, so it cannot now expect to use Exhibit 10 in its expert
 11 declaration to support its invalidity arguments. *ASUS Computer*, 2014 WL 1463609 at *8-9. The
 12 Court should strike Exhibit 10 and paragraphs 137 and 180 of Dr. Bhattacharjee's declaration on
 13 this basis.

14 3. Reliance on Undisclosed Versions of Source Code

15 Dr. Bhattacharjee also bases key parts of his declaration on source code that Google did
 16 not disclose in its invalidity contentions. As an initial matter, [REDACTED]
 17 [REDACTED]
 18 [REDACTED]. Bhattacharjee
 19 Decl. at ¶¶127-145 (n.21 – n.34). Of course, Google's Patent Local Rule 3-4 document
 20 production was due December 6, 2021, and Google never sought leave to amend. It is improper
 21 for Google to rely on code that was not produced with its invalidity contentions. *See, e.g., LXXS*
 22 *Corp.*, 2004 WL 1368860, at *2-3 (precluding a party from relying on materials that were not
 23 referenced in final invalidity contentions or produced pursuant to Patent L.R. 3-4, but then relied
 24 upon in support of a motion for summary judgment); *Good Tech. Corp. v. MobileIron, Inc.*, No.
 25 5:12-cv-05826-PSG, Dkt. 278 (N.D. Cal. April 23, 2015) (granting motion to strike prior art
 26 source code produced after PLR 3-4(b) deadline).

27 Putting aside the issue of when the code was produced, Dr. Bhattacharjee states that his
 28 understanding of the YouTube Remote System is based in part on his analysis of source code for

the YouTube Remote system as of: (1) November 9, 2010; (2) July 12, 2011; and (3) December 1, 2011. Bhattacharjee Decl. at ¶126. Google’s invalidity contentions do not specifically cite any of these versions of source code. *See* Ex. A (’615 Chart). Yet Google now specifically cites to these versions of code to support its invalidity arguments. As just one example, Dr. Bhattacharjee references the December 1, 2011 version of the source code to argue that it would have been obvious to allow the YouTube Remote to display available playback devices for selection of a particular display. Bhattacharjee Decl. at ¶170. This issue permeates Dr. Bhattacharjee’s declaration, which cites specific files that were not cited in the contentions, and cites versions of source code that appear different from the version cited in the contentions. *See, e.g., id.* at ¶ 133 n.21, ¶133 n.22, ¶134 n.23, ¶134 n.24, ¶139 n.25, ¶140 n.26, ¶141 n.27, ¶141 n.28, ¶141 n.29, ¶143 n.30, ¶143 n.31, ¶144 n.32, ¶145 n.33, ¶145 n.34.

The sheer number of these references shows the extent to which Dr. Bhattacharjee relies on source code citations that do not appear in Google’s invalidity contentions. Dr. Bhattacharjee further references these undisclosed versions of the source code as support for his position that certain claim limitations of the ’615 Patent are either anticipated or rendered obvious by the YTR System. *See* Bhattacharjee Decl. at ¶¶158 n.35, 170. As previously discussed, new references are prior art instead of background if the expert relies on them as references that “render[] the asserted claims [invalid].” *Verinata*, 2014 WL 4100638 at *5. Dr. Bhattacharjee’s reliance on this new prior art for invalidity grounds is improper at this stage. The Court should strike paragraphs 133-34, 139-41, 143-45, 158, 170, and 182 of Dr. Bhattacharjee’s declaration on this basis.

D. Google Broadly Cited To Its Own Source Code Without Providing Specific Invalidity Theories Or Citations

In addition to the new source code addressed above, Google’s motion for summary judgment points to *specific* portions of previously disclosed source code. For example, Google

1 now cites the [REDACTED]⁵.
 2 Google's invalidity contentions, however, merely cite to directories and subdirectories of source
 3 code without identifying any specific files or pinpoint citations to specific line numbers that would
 4 map those citations onto specific claim elements. Google's motion for summary judgment was the
 5 first time it provided specific, pinpoint citations to *any* source code.

6 This Court has recognized that pinpoint citations for available source code are required.
 7 Anything less fails to put parties on notice of key litigation positions, and therefore, the Court has
 8 stricken contentions that fail to provide this specificity. *See MasterObjects, Inc. v. Amazon.com,*
 9 *Inc.*, No. C20-08103 (WHA), 2021 WL 5987101, at *2-3 (N.D. Cal. Dec. 17, 2021). This Court
 10 has typically recognized the importance of providing these pinpoint citations in the context of
 11 infringement contentions. *Id.* at *2 ("Where the accused instrumentality includes computer
 12 software based upon source code made available to the patentee, the patentee must provide
 13 'pinpoint citations' to the code identifying the location of each limitation."); *quoting Finjan Inc. v.*
 14 *Check Point Software Tech., Inc.*, No. 18-cv-02621 (WHO), 2019 WL 955000 at *5 (N.D. Cal.
 15 Feb. 27, 2019). However, Patent Local Rule 3-3(c) also applies that logic to invalidity contentions,
 16 because the Local Rule "requires [Google] to cite specifically within the prior art reference, not
 17 merely to the entire document or some general element therein." *Avago*, 2007 WL 2103896 at *2.

18 In this case, the result should be no different. Google has no excuse for failing to provide
 19 pinpoint citations: the source code Google relies on is from Google's own code. Despite multiple
 20 communications between the parties, Google withheld its pinpoint citations to the source code and
 21 left Sonos in the dark as to its relevance to Google's invalidity contentions, hiding the ball until its
 22 motion for summary judgment. *Supra*, §II. For this reason, the Court should strike paragraphs
 23 133-34, 139-41, 143-45, 158, 170, and 182 of Dr. Bhattacharjee's declaration on this basis.

24
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 26
 27 ⁵ Google cites this file as being located at file [REDACTED]
 28 [REDACTED]

See Bhattacharjee Decl. at ¶133 n.21.

1 **V. CONCLUSION**

2 Accordingly, Sonos respectfully requests that this Court strike 1) page 19, lines 1-7; page
3 20, lines 3-6, 11-14 from Google's Motion for Summary Judgment; 2) ¶¶ 133-34, 136-137, 139-
4 41, 143-45, 149, 158, 159-160, 169-171, 180, and 182 from Dr. Samrat Bhattacharjee's
5 supporting declaration (submitted as Exhibit 1 to Google's Motion for Summary Judgment); and
6 3) the entirety of Exhibits 10 and 14 to Google's Motion for Summary Judgment.

7
8 Dated: April 21, 2022

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